

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

SULYAMAN AL ISLAM WASALAAM,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:17CV697
	)	
KIMBERLY CORNELIUS, et al.,	)	
	)	
Defendant(s).	)	

ORDER AND RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE

Plaintiff Sulyaman Al Islam Wasalaam submitted a pro se complaint under 42 U.S.C. § 1983 and requests permission to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). Plaintiff names Kimberly Cornelius and Gail L.B.C. Allen, two of his relatives, as Defendants. Although Plaintiff's claims are difficult to precisely decipher, he appears to allege that he had an agreement with Defendants concerning the care of his mother and that they violated the agreement in several respects.

Because Plaintiff seeks to proceed *in forma pauperis*, this Court will conduct an initial review of the Complaint under 28 U.S.C. § 1915(e). That statute provides that "the court shall dismiss the case at any time if the court determines that – . . . (B) the action or appeal – (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2).

Applicable here, a plaintiff “fails to state a claim upon which relief may be granted,” 28 U.S.C. § 1915A(b)(1), when the complaint does not “contain sufficient *factual matter*, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (emphasis added) (internal citations omitted) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). “Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of “entitlement to relief.”’” Id. (quoting Twombly, 550 U.S. at 557). This standard “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” Id. In other words, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Id.<sup>1</sup>

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<sup>1</sup>Although the Supreme Court has reiterated that “[a] document filed *pro se* is to be liberally construed and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers,” Erickson v. Pardus, 551 U.S. 89, 94 (2007) (internal citations and quotation marks omitted), the United States Court of Appeals for the Fourth Circuit has “not read Erickson to undermine Twombly’s requirement that a pleading contain more than labels and conclusions,” Giarratano v. Johnson, 521 F.3d 298, 304 n.5 (4th Cir. 2008) (internal quotation marks omitted) (applying Twombly standard in dismissing *pro se* complaint); accord Atherton v. District of Columbia Off. of Mayor, 567 F.3d 672, 681-82 (D.C. Cir. 2009) (“A *pro se* complaint . . . ‘must be held to less stringent standards than formal pleadings drafted by lawyers.’ But even a *pro se* complainant must plead ‘factual matter’ that permits the court to infer ‘more than the mere possibility of misconduct.’” (quoting Erickson, 551 U.S. at 94, and Iqbal, 556 U.S. at 697, respectively)).

For the reasons that follow, the Complaint should be dismissed pursuant to 28 U.S.C. § 1915(e)(2) because it fails to state a claim on which relief may be granted.

In order to state a claim under § 1983, a plaintiff must allege that any named defendants acted under color of state law and that they violated the plaintiff's federal constitutional or statutory rights. Philips v. Pitt County Memorial Hosp., 572 F.3d 176, 180 (4th Cir. 2009). Actions by private persons, no matter how wrongful, do not qualify as state actions. Id. at 181. Plaintiff sets out no allegations that Defendants acted under color of state law and he bases his claims purely on his private disputes with those persons. As the Court informed Plaintiff in a previous action he filed against Defendant Cornelius and others based on similar allegations, he cannot state a claim for relief under § 1983 based on his disputes with his family members. See Wasalaam v. Cornelius, slip op., No. 1:17CV608 (M.D.N.C. July 11, 2017) (unpublished), recommendation adopted, slip op., No. 1:17CV608 (M.D.N.C. Aug. 4, 2017). Nevertheless, Plaintiff again raises such claims in the present action. Plaintiff fails to state any claim for relief under § 1983 and this action should be dismissed.

As a result, Plaintiff's request to proceed *in forma pauperis* should not be countenanced, with the exception that *in forma pauperis* status shall be granted for the sole purpose of entering this Order and Recommendation.

Plaintiff has submitted the Complaint for filing, however, and, notwithstanding the preceding determination, § 1915(b)(1) requires that he make an initial payment of \$23.00. Failure to comply with this Order will lead to dismissal of the complaint.

IT IS THEREFORE ORDERED that *in forma pauperis* status be granted for the sole purpose of entering this Order and Recommendation.

IT IS FURTHER ORDERED that within twenty (20) days from the date of this Order Plaintiff make an initial filing fee payment of \$23.00.

IT IS FURTHER ORDERED that Plaintiff's trust officer shall be directed to pay to the Clerk of this Court 20% of all deposits to his account starting with the month of September, 2017, and thereafter each time that the amount in the account exceeds \$10.00 until the \$350.00 filing fee has been paid.

IT IS RECOMMENDED that this action be dismissed pursuant to 28 U.S.C. § 1915(e)(2) for failing to state a claim upon which relief may be granted.

This, the 10th day of August, 2017.

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/s/ L. Patrick Auld  
**L. Patrick Auld**  
**United States Magistrate Judge**